

*W. R. T. J.*

May 20, 1953

Senator William A. Sullivan  
P. O. Drawer 391  
Globe, Arizona

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ARIZONA ATTORNEY GENERAL**

Dear Senator Sullivan:

With reference to your letter of April 7, 1953, we enclose herewith our memorandum concerning the question: Is it possible to place some kind of tax on house trailers, or their occupants, for school purposes?

We have not included in the enclosed memorandum a discussion of a fifth possibility as to taxing of trailers, that possibility being the imposition of a privilege tax upon the owners or operators of a trailer court or park. As was explained to you during your last visit to my office, we have been withholding this memorandum in an effort to secure a copy of some former legislation heretofore offered for approval but subsequently defeated. We wish to inform you that we are making further investigation and within a very short time an additional memorandum will be forthcoming.

We trust that our suggestions contained herein will be of some assistance to you with your problem.

Yours very truly,

JPB:GC

JAMES P. BARTLETT  
Assistant to the  
Attorney General

53-105

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## ARIZONA ATTORNEY GENERAL

May 20, 1953  
Opinion No. 53-105

TO: Senator William A. Sullivan  
P. O. Drawer 391  
Globe, Arizona

RE: Taxation of House Trailers

QUESTION: Is it possible to place some kind of tax on house trailers or their occupants for school purposes?

Rather than giving a definite yes or no answer to this problem, it seems advisable to present a more or less broad survey of the types of taxation which might be used and the validity of such taxes as decided in various jurisdictions of the United States.

Briefly, four possibilities in the field of taxation are worthy of consideration. These are:

1. A tax based upon the police power of the State or its subdivisions;
2. Lieu taxes;
3. A personal property tax; and
4. A tax placed directly upon the occupants of a house trailer.

The first type of taxation listed above would appear to be of little value in securing additional financial aid for school purposes. This is true for the reason that taxation which is based on the police power must be used for the purpose of regulation and may not ordinarily be used for the primary purpose of raising revenue. By the great weight of authority, it has been held that where an act is based under the police power the money collected must not be more than is necessary to carry out the provisions of the legislation. This distinction is discussed in the case of COUNTY BOARD OF SUPERVISORS v. AMERICAN TRAILER CO., (Va. 1952) 63 SE 2d 115. In this case an ordinance passed by

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the County of Fairfax, among other things, imposed a license tax of \$25.00 a year to cover certain trailer lots and \$5.00 a year to cover certain other trailer lots. A 1948 amendment to the ordinance imposed a license tax of \$50.00 per year per trailer lot. In passing upon the validity of the ordinance with relation to the raising of revenue, the court stated, l.c. 118 and 119:

"Clearly we think this was only a regulatory act and authorized only a regulatory ordinance. The title of the act, as noted, states its purpose. The body of the act emphasizes that its purpose is to authorize ordinances 'to regulate' the location and operation of trailer camps, 'to protect the health, safety, and welfare' of the public. The tax permitted is a tax upon the license so authorized. There is nothing in the title or in the body of the act to suggest that a revenue measure was intended. \* \* \*

\* \* \* \* \*

If it is manifest that the amount imposed is out of proportion to the expenses involved, the ordinance will generally be regarded as a revenue measure and void as a regulation under the police power. 53 C.J.S., Licenses, § 19 a, p. 516. However, if the business is harmful or one which the State may prohibit, the license fee may be such as to effect a reasonable restraint on or practically a prohibition of it. 53 C.J.S., Licenses, § 19, at page 519; 33 Am. Jur., Licenses, § 45, p. 368; United States v. Sanchez, 340 U.S. 42, 71 S. Ct. 103, 95 L. Ed. 47. The business here involved does not fall within that classification.

It is also true, as argued by appellants, that a license tax may be imposed both for revenue end to regulate, *Elex v. City of Richmond*, 189 Va. 273, 283, 52 S.E. 2d 250, 254; but authority to adopt an ordinance to regulate is not authority to adopt an ordinance for general revenue purposes."

Hence, an act to be valid as an exercise of the police power, must not assume the aspect of an act, the primary purpose of which is to raise revenue. This being true a tax upon trailers enacted

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for a public purpose, such as health protection, fire prevention and so forth, would be useless as a means of raising funds for school aid.

With reference to the second type of taxation mentioned above, an amendment to Article 9, Section 11 of the Constitution of Arizona, imposes a license tax on vehicles registered for operation upon the highways of the State. The language of this section provides in part:

"§ 11. (Assessment law--Registered vehicle license tax.) \* \* \* Beginning January 1, 1941, a license tax is hereby imposed on vehicles registered for operation upon the highways in Arizona, which license tax shall be in lieu of all ad valorem property taxes on any vehicle subject to such license tax. \* \* \*

Definitions of the words "vehicle" and "trailer" are found in Section 66-401, A.C.A. 1939, as amended:

"Vehicle" means any device in, upon, or by which any person or property is or may be transported or drawn upon a public highway; but does not include devices moved by human power or used exclusively upon stationary rails or tracks, except that, for the purposes of the laws relating to the operation of vehicles and rules of the road, a bicycle or ridden animal shall be deemed to be a vehicle;  
\* \* \* \* \*

"Trailer" means any vehicle without motive power, designed for carrying property or passengers wholly on its own structure, and for being drawn by a motor vehicle;  
\* \* \*

The above quoted definitions are inclusive of that type of vehicle commonly known as a house trailer. It is apparent that if a trailer, as above defined, retains its identity as such a vehicle and is licensed for the current year under Article 9, Section 11, supra, taxation of the same property (as for instance an unsecured personal property tax) would be prohibited.

Further, the use of such license fees or lieu taxes has been pre-determined, by the passage of an amendment to the Constitution

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of Arizona. This negatives the use of moneys collected for purposes other than those set out in Article 9, Section 14. Upon reading this constitutional section it may be seen that no moneys derived from taxes relating to the use of vehicles on the highways may be expended for any purpose not relating to highways.

A natural question presents itself concerning those trailers which are not licensed under this constitutional provision and which, due to lack of use on the roads, have more or less lost their identity as vehicles, acquiring instead the characteristics of a dwelling or home. Seemingly, trailers falling into this classification would not be taxed in any manner.

To obviate such a result compels us to consider the third category above mentioned.

Under the pertinent portions of Article 9, Section 2 of the Constitution of Arizona, a mandate is set out in the following language:

"§2. (Tax Exemption.) \* \* \* All property in the state not exempt under the laws of the United States or under this constitution, or exempt by law under the provisions of this section shall be subject to taxation to be ascertained as provided by law. \* \* \*

Section 73-1820, et seq., A.C.A. 1939, as amended, details the method of assessment of personal property belonging to any person not owning real estate within the county of \$200.00 value. Such property is to be entered on the unsecured personal property tax roll. The duty of the county assessor to assess such property continues throughout the year and there is no requirement that such property be in the county on the first day of the year, PACKARD CONTRACTING COMPANY v. ROBERTS, (1950) 70 Ariz. 411, 222 P. 2d 791.

From these constitutional and statutory provisions, it is the opinion of this office that house trailers used as Arizona residences are taxable if the county assessor is satisfied that the trailer has a taxable situs in the state and county, and if for that particular year the lieu tax has not been imposed or paid.

An example of the taxation of house trailers as personal property is found in Section 200.45 of the statutes of the State of Florida:

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"200.45 \* \* \* there is hereby levied and assessed upon each automobile trailer that does not have a current year's Florida license tag therupon the same amount that is assessed upon all other personal property within the county where such trailer is found to be."

In an opinion by the Attorney General of the State of Florida (the resume of which is found in Section 20-105, Commerce Clearing House State and Local Tax Citeator for the State of Florida) it was decided that by payment of the current year's license tag fee the owner of the trailer could avoid payment of any ad valorem property tax upon the same trailer. It is suggested by this office that the same line of reasoning would be equally true in the State of Arizona should an attempt be made to tax a trailer as personal property.

The moneys collected from taxation of personal property must be used in accordance with the method prescribed for all taxes collected for county purposes on the basis of estimated budget for each county. These funds, when earmarked for school purposes, would of necessity reach the schools via the prescribed average daily attendance formula, which now controls the use of taxes levied on a county level. This would, no doubt, limit the usefulness of this particular classification of tax.

If not for its questionable constitutionality, the last category of taxation would no doubt be the most desirable type to employ in order to accomplish the proposed purpose.

In plain language, the difficulty involved is whether or not a direct tax on the occupant or occupants of a trailer is a valid subject of taxation. By way of explanation, a consideration of several decisions from various jurisdictions would not be amiss. In the cases of COUNTY COMMISSIONERS OF ANNE ARUNDEL COUNTY v. ENGLISH, (Md. 1943) 35 A. 2d 135 and KELLY v. SAN DIEGO, (Calif. 1944) 147 P. 2d 127, such taxes were held to be unconstitutional. However, the constitutionality was sustained in RAPA v. HAINES, (Ohio 1951) 101 NE 2d 733, as well as in EDWARDS v. MAYOR AND COUNCIL OF BOROUGH OF MOONACHIE, (N.J. 1949) 68 A. 2d 744.

In the ANNE ARUNDEL case, supra, a statute imposing an annual license fee of \$30.00 upon trailers used as habitations, was held unconstitutional as depriving the owner of a trailer of a property right through the imposition of an arbitrary tax not based upon any consideration of the public welfare, such as requiring a compliance with health regulations and, hence, had no relation to the police power while depriving the owner of property without due

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process of law. The court pointed out that the entire purpose of the act was to raise revenue, there being no other conditions to be complied with to get a license but the payment of the money. The court also noted that, while the necessity of raising revenue gave public authorities the right to impose tax burdens upon members of a class, such right could not be exercised to impose upon members of a select class burdens which were not shared by others in like circumstances. The court stated:

" \* \* \* Although, as pointed out, the counties of this State are faced with a large influx of people necessary for war work in industrial centers and, as a result, are compelled to go to great expense in providing schools and other necessities at public expense, no differentiation should be made between those living in a house on a temporary foundation and those living adjoining in a house on a permanent foundation. The family that lives in a trailer should not be made to pay a tax greater than his neighbor who lives in a humble cottage. No additional expense to the county or State is entailed because it is on blocks rather than on a foundation. It is not just classification to make the person who occupies a small trailer worth \$600 pay the same tax as one who owns or occupies much more sumptuous quarters in a trailer costing \$2,500. It is not uniform or equal taxation to make a family who, on account of economic necessity, lives in a shanty boat pay a tax which a more prosperous citizen who occupies a mansion is not compelled to pay. In such times as these when labor is seriously needed in war plants and housing facilities are not adequate, should people who are willing to live in a trailer be specifically taxed for that reason? This Act is not a police regulation. This trailer and the site where it is located offends no sanitary regulation. The Act in question is not one for the regulation of the health, comfort, safety or welfare of the community. This Act deprives the owner of a property right essential to a trailer which is the right to occupy it as a place of habitation." (Emphasis supplied)

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The KELLY case, *supra*, dealt with an ordinance of the City of San Diego which imposed a "service charge or tax of ten cents (10¢) per day per unit upon the occupant or occupants of each trailer occupying a unit of space in any trailer camp within the City of San Diego". The court there noted that trailers, under California law, are not the subject of general taxation and judicial notice was also taken of the fact that great numbers of persons had moved into the San Diego area to work in war industries, overcrowding ordinary living quarters and compelling many people to live in trailers. Nevertheless, the court held, *l.c.* 131:

" \* \* \* Taxes on real estate, and the privilege charge placed on automobile trailers, are based on ownership and primarily are paid by the owners. The license tax involved here has nothing to do with ownership of property. It is a charge imposed on the right of certain people to occupy a certain kind of dwelling that affords some protection from the elements. It is a tax on occupancy. The house, apartment, hotel or lodging furnishes protection from the elements as does the trailer. We can see no valid distinction, for the purpose of classification, between the occupancy of a trailer and the occupancy of a permanent structure except perhaps the greater comfort and convenience of the latter and the higher rent paid. The occupant of the trailer is taxed under the provisions of the ordinance, while the occupant of the permanent structure is entirely exempt from the license. Thus under the rule announced in *Ruenemann v. City of Santa Barbara*, *supra*, and approved in *Continental Baking Co. v. City of Escondido*, *supra*, the city of San Diego may not levy a license tax on occupants of automobile trailers while entirely exempting others of the same class (occupants of permanent structures) from the same or any other similar charge." (Emphasis supplied)

Directly in opposition to the holdings in the above cases, the RAPA case, *supra*, sustained Section 6292-2 of the Ohio General Code which imposed a tax on house trailers used for human habitation (while this statute is too lengthy to incorporate into this paper, reference is hereby made to the above section of the Ohio Code as

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an example of legislation which has been held constitutional).

The Ohio Court of Common Pleas for Montgomery County, speaking through Judge Mills, held, 1. c. 736:

"Therein the legislature defines house trailers used for human habitation as motor vehicles and a specific use tax can be levied upon motor vehicles for their use upon the roads of this state; what then, is to prevent the legislature from enacting a specific tax for house trailers used for human habitation and which are classified by the legislature as motor vehicles, when the purpose of the specific act is for their use and occupation, and not according to their value?

\* \* \* \*

This court, upon examination of the aforementioned authorities and the definition by sister states and the Supreme Court of the State of Ohio of the words 'excise tax' as a license tax or use tax and a license tax is no more than a license for the use of the property. This court is of the opinion the tax upon trailers, as provided for in Section 6292-2 of the General Code of the State of Ohio is an excise tax for the use of trailers for human occupancy and is not in contravention of any constitutional authority, state or federal.  
(Emphasis supplied)

As an indication of the finality of this decision in the courts of Ohio, an appeal to the Supreme Court of Ohio was dismissed in August of 1952; the court stating as its reason "that no debatable constitutional question is involved" (108 NE 2d 833).

In the EDWARDS case, supra, the provision of an ordinance licensing and regulating trailer camps, requiring the payment of \$200.00 per year and \$1.00 per year per trailer for "revenue purposes" was held not to be so unreasonable or confiscatory as to invalidate the ordinance for being in violation of the Fourteenth Amendment or the provision of the New Jersey Constitution relating to the protection of property rights. Pointing to the need for revenue in view of the fact that it had been shown that the operation of the particular trailer court resulted in a substantial increase in the school enrollment and had given rise to special health and sanitation problems and needs, the court stated that the quantum

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of the license tax or excise levied rested in the sound discretion of the legislative authority; that jurisdictional interference was not warranted unless the tax was prohibitory and unreasonable and that there being a presumption that the tax assessed was reasonable in amount, the burden rested upon the person challenging the law to rebut such presumption. The persons challenging the law in this case failed to rebut the presumption.

It is interesting to note, however, in the decision just cited, that the tax was based upon an ordinance which was inclusive as to its terms of all other places and buildings used for sleeping and lodging purposes. Hence, it would seem that the objections raised to such a type of taxation in the ANNE ARUNDEL case and KELLY case, *supra*, were largely overcome. It is possible too that the court looked to the fact that the ordinance served not only as a tax measure, but as an exercise of the police power in the regulation of trailer camps and parks.

Another decision where a tax on the occupancy of a trailer was by implication held constitutional, is RICHARDS v. PONTIAC, (Mich. 1943) 9 N.W. 2d 885. Examination of this case reveals that the state had enacted a statute providing among other things, for an annual license fee upon trailers. The case actually turned on the point that a municipality could not set up an ordinance which was in contravention of a state law. The constitutionality of the state law, although not specifically discussed, had evidently not been attacked and, hence, it would be safe to assume, in absence of court authority, that such law was valid. Assuming that it is valid it appears again that the license fee was an exercise of the police power as well as an indirect attempt to raise revenue.

For other decisions germane to the question at hand, see:

HOFFMAN v. BOROUGH OF NEPTUNE CITY, (N.J. 1948)  
60 A. 2d 92;  
TOWN OF SOUTHPORT, CLEMSON COUNTY v. ROSS, (N.Y.  
1951) 109 N.Y.S. 2d 196, and  
NICHOLS v. PIRKLE, (Ga. 1947) 43 S.E. 2d 306.

In conclusion, it would seem that the first three categories of taxation would be of little value in accomplishing the desired purpose of aiding the public schools. The fourth possibility, i.e., direct taxation of the occupant or occupants of a trailer, is the logical type of taxation to employ to accomplish this purpose, but this office entertains serious doubts as to its constitutionality unless the objections propounded in the ANNE ARUNDEL and KELLY cases could be overcome.

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